

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ENVIRONMENTAL DIMENSIONS, INC.,

Plaintiff,

v.

No. 1:16-cv-1056-KWR-JHR

ENERGYSOLUTIONS GOVERNMENT
GROUP, INC. (n/k/a Atkins Energy
Government Group, Inc.),

Defendant.

ORDER FOR BRIEFING

THIS MATTER comes before the Court following the Court's prior order (**Doc. 202**) to file briefing relating to the resolution of damages. On October 28, 2020 the Court granted summary judgment on Defendant's remaining counterclaim for an open account/account stated. **Doc. 202**. The Court directed the parties to file briefing within fourteen (14) days of the entry of that order on whether a jury trial is required to resolve the issue of damages. On November 11, 2020, Defendant filed briefing with the Court (**Doc. 203**) and Plaintiff, while not in compliance with the Court's directive, filed a "Notice and Statement of Plaintiff on Defendant's Counterclaim" (**Doc. 204**) to the effect that the company no longer exists and has no assets.

Defendant's brief advises the Court that a jury trial is unnecessary in light of the invoices establishing the exact amount owed and requests the Court find that Defendant is entitled to \$1,041,531.74 in principal damages, exclusive of pre and post-judgment interest and attorneys' fees.¹

¹ Defendant provides that "[Defendant] uses the term 'principal damages' throughout [the brief] because it intends to file motions for pre- and post-judgment interest as well as attorneys' fees. It is not intended to indicate that ESGG seeks any other type of damages that would require submission to a jury." **Doc. 203 at 2 fn 2**.

Having considered Defendant's brief and Plaintiff's nonresponsive "Notice," the Court has decided to treat Defendant's brief (**Doc. 203**) as a motion for summary judgment on damages. Accordingly, the Court directs **Plaintiff to respond within fourteen (14) days of the entry of this order.** Plaintiff is to file briefing specifically with disputes as to facts and citation to the record. If Plaintiff fails to specifically dispute Defendant's assertions of fact with citation to the record, the Court may deem Defendant's facts undisputed. **Defendant shall subsequently be permitted a reply within fourteen (14) days of Plaintiff's response.** The Court notifies the parties that failure to comply may result in sanctions, including dismissal or entry of default.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE